



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Pearl Properties, Inc.

File: B-277250.2

Date: September 18, 1997

Felita A. Phillips for the protester.

Richard A. Marchese, Esq., Department of Housing and Urban Development, for the agency.

Christina Sklarew, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of elimination of protester's proposal from the competitive range based on disagreement with agency's evaluation is denied where the evaluation was conducted in accordance with the criteria announced in the solicitation, and the record supports the evaluators' conclusions.

DECISION

Pearl Properties, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. H03R96015600000, issued by the Department of Housing and Urban Development (HUD) for real estate asset management (REAM) services for single-family properties owned by HUD in its District of Columbia Office jurisdiction. Pearl alleges that its proposal was improperly evaluated because HUD improperly disregarded corporate experience by a predecessor firm and because HUD considered an allegedly erroneous negative past performance report.

We deny the protest.

The RFP was issued on July 24, 1996, as a total small business set-aside for the acquisition of management and other related services. The RFP listed the following evaluation factors, with their relative weights, to be scored on a 100-point scale: prior management experience (30 points); past performance (25 points); office location(s) (20 points); and management capability (25 points). Award was to be made to the offeror submitting "the proposal that best conforms to the solicitation and is most advantageous to the Government (that proposal which represents the best value.)"

The agency received 17 timely submitted proposals, including the protester's. After the proposals had been scored by individual technical evaluation panel (TEP) members, the TEP developed a consensus score for each proposal. Five offers were rated as technically acceptable, and seven offers, including Pearl's, were deemed technically unacceptable in their current form but capable of being made acceptable through clarifications/discussions. These 12 proposals were included in the competitive range.

On February 3, the contracting officer notified Pearl by letter that its proposal was considered to be within the competitive range for further negotiations, and identified areas in the proposal that required additional information and/or clarification. The letter requested further detail or specific information regarding the method of performance Pearl was proposing, negative past performance information received from one of HUD's offices, and certain aspects of Pearl's proposed management of the contract. The letter also transmitted an amendment to the RFP. HUD instructed Pearl to submit an amended proposal and to complete a pricing schedule that was included in the solicitation amendment.

Pearl submitted an amended proposal, which was evaluated with the result that the protester's overall score improved by a total of 3 points. Nonetheless, the TEP continued to have concerns regarding the firm's lack of experience in managing a large inventory of properties and concluded that Pearl had not provided information to adequately refute the reference reports of Pearl's poor past performance.

Nine amended technical proposals were considered superior to Pearl's, of which seven offered a lower price. Based on its relative standing, the contracting officer concluded that Pearl's proposal did not have a reasonable chance of being selected for award and excluded it from the competitive range. Pearl was notified of its exclusion on June 2, and requested a pre-award debriefing. HUD provided a written debriefing on June 5, and this protest followed. The contract award has been stayed pending resolution of the protest.

Pearl alleges that its proposal was excluded from the competitive range as the result of an improper evaluation. First, Pearl argues that it has 15 years of experience in the management of government properties and that this "more than qualifies it to receive the full 30 points for Factor (1)." Pearl asserts that its low score in this area must be the result of HUD's failure to consider the experience of its predecessor, Pearl Properties, Ltd.

The RFP lists "prior management experience" as the most heavily-weighted single technical evaluation factor, and states:

The offeror shall provide evidence of the offeror's experience in the management of single family properties similar to the type of inventory covered by this solicitation. Prior management experience must demonstrate the offeror's ability to perform the duties required under this RFP. If the offeror's property management experience is in areas other than single family property management, the offeror's proposal must demonstrate, to the satisfaction of HUD, that the experience relates to the duties required by this RFP. Include a description of work currently in progress and/or completed within the last three to five years that is relevant to this procurement. Include names, addresses, and telephone numbers of contact points for these clients. The Government reserves the right to request information from any source so named. The Government also reserves the right to obtain information from sources not named in the proposal.

Pearl's initial proposal listed current and past property management contracts, indicating the length of the contract and the cumulative number of properties managed under each contract. For example, for a contract performed between 1984 and 1987, which was the highest-volume contract listed, Pearl's proposal showed that it had managed a total of 2,500 properties over the course of 3 years. However, Pearl provided no indication of the length of time an average property was managed, and there was no way for the agency to determine what Pearl's typical inventory of properties was at any given time. Pearl's more recent, and therefore more relevant, contracts show a lower volume; the current inventory is listed in the proposal as 75 to 100 homes. In contrast, the RFP stated that HUD anticipated an inventory on the effective date of award to include approximately 850 to 900 properties, with an average of approximately 100 properties to be added each month and an average sale of 84 properties to be closed each month.¹

In its letter requesting additional information, HUD acknowledged in connection with this factor that Pearl listed more than 14 years of property management experience but pointed out that the volume did not appear to be as high as the inventory covered under this solicitation. Pearl did not address this concern in its amended proposal.

Because Pearl provided some additional information in its amended proposal regarding the manner in which it proposed to perform the work, the TEP increased its score by 1 point under this factor. However, because the evaluators concluded from the information provided by Pearl that the volume of properties the firm had

¹For comparison purposes, we note that under a 3-year contract, beginning with an inventory of 850 properties and adding 100 properties per month, the cumulative inventory managed would be 4,450 properties.

managed in the past did not compare with the inventory covered under this solicitation, Pearl's score remained relatively low under this factor.

The evaluation of proposals is primarily a matter within the agency's discretion since it is responsible for defining its needs and for deciding on the best methods for accommodating them. Seair Transport Servs., Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458 at 4. Thus, we question the evaluation only if the record demonstrates that it was unreasonable or inconsistent with the RFP's evaluation criteria. Id.

Here, the record establishes that HUD's evaluation was reasonable and consistent with the RFP's terms. The RFP instructed offerors to provide evidence of their experience in the management of single family properties "similar to the type of inventory covered by this solicitation." (Emphasis added.) Contrary to Pearl's speculation, the record shows that the relatively low score given to Pearl's proposal under this factor was based on the TEP's conclusion that Pearl had not managed a similar type of inventory, and that score was therefore consistent with the evaluation factors established in the RFP; the record contains no evidence that the TEP had any concerns regarding the length of Pearl's experience or the applicability of corporate experience gained by its predecessor company.

Pearl also objects to its low score under the "past performance" evaluation factor, arguing that it is based on erroneous information and reflects retaliatory and vindictive motivation on HUD's part.

In order to evaluate this factor, HUD contacted the references identified in Pearl's initial proposal for the property management contracts that were listed as experience, as permitted under the RFP. HUD received a negative performance report from its Ohio office, which was listed as a reference; the report included a list of specific performance issues and the statement that HUD had decided not to exercise any options under that contract because of poor contractor performance. The TEP awarded Pearl's initial proposal 9 points (out of a possible 25 points) under this factor. HUD identified the source of the negative report to Pearl, asking the firm to address the issue in its amended proposal and to provide additional reference information.

In its amended proposal, Pearl acknowledged that it had received negative performance evaluations from the Ohio HUD office, but asserted that the evaluations were made "prematurely and wrongly." The protester explained that HUD found deficiencies in Pearl's performance toward the end of a contract's term and, rather than asking Pearl to correct these deficiencies, requested that the subsequent contractor correct them and sought to deduct the cost of the corrections from Pearl's final contract payment. When Pearl appealed the matter to the HUD Board of Contract Appeals (BCA), the BCA found that under the specific terms of the contract, HUD had to first allow Pearl a chance to reperform the work found to be deficient; not having done that, it had forfeited its right to other

remedies by the express terms of the contract. Pearl Properties, 96-1 BCA ¶ 28,219. Pearl cited this case outcome to support its claim that its performance under the contract was acceptable and in its protest it alleges that HUD's evaluation of this factor is colored by a retaliatory and vindictive motive arising from Pearl's pursuit of this matter.

Among the undisputed material facts that the BCA decision cites as permitting summary judgment is the fact that Pearl's performance was deficient and required correction. The fact that the contract required HUD to pay Pearl for the corrections that Pearl did not perform does not alter that result, and nothing in the record contradicts the negative performance evaluation. Further, there is no evidence in the record of bias or retaliatory motive on HUD's part. Pearl did not provide any additional references or show why its past deficient performance should not affect its score under this factor.

Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. In addition to producing credible evidence showing bias, the protester must demonstrate that the agency bias translated into action that unfairly affected the protester's competitive position. Id. Pearl has furnished no credible evidence to support its allegation; moreover, since the record supports HUD's evaluation of Pearl's proposal (and its consequent exclusion from the competitive range), it provides no basis upon which to question the motives of the evaluators.

The protest is denied.

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